IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7503 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUNICIPALITY KESHOD

Versus

KISHORE NATHABHAI VYAS

Appearance:

1. Special Civil Application No. 7503 of 2001

MS SEJAL K MANDAVIA for Petitioner No. 1

MR ANAND L SHARMA for Respondent No. 1

MR DEEPAK P SANCHELA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/12/2001

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, Keshod Municipality has challenged the judgment and award dated 19.4.2001 passed by the Labour Court, Junagadh in Reference (LCJ) No. 12 of 2000 by

which the Labour Court has directed the petitioner-Municipality to reinstate the respondent to the original post with continuity of service and with 50% backwages and also costs of the reference quantified at Rs.1,000/-.

2. The respondent was employed as a daily wage helper by the petitioner-Municipality on 1.12.1997. Thereafter in the year 1999 the petitioner-Municipality terminated the respondent's services. Hence, the respondent raised an industrial dispute which was referred to the Labour Court, Junagadh. The Labour Court held that the respondent had completed 240 days service in the year immediately preceding the date of termination and since the respondent was not given any notice or notice pay or retrenchment compensation, there was violation of Section 25F of the Industrial Disputes Act, 1947. The Labour Court accordingly passed the aforesaid award of reinstatement with continuity of service and 50% backwages.

3. Ms Sejal Mandavia, learned counsel for the petitioner-Municipality has vehemently submitted that the respondent had put in only 209 days service in the year 1998 and only 54 days service in the year 1999. Hence, the respondent had not completed 240 days service in any year. It is further submitted that in any view of the matter, the Labour Court ought not to have awarded 50% backwages though the petitioner-Municipality had pointed out that the respondent was running his own shop at village Patodra in Keshod Taluka of Junagadh District.

4. On the other hand, Mr DP Sanchela, learned counsel for the respondent-workman has vehemently opposed the petition and submitted that once non-compliance with the provisions of Section 25F of the Industrial Disputes Act was found to be there, the Labour Court ought to have passed an award for reinstatement with continuity of service and full backwages. Hence, there is no infirmity in the award of the Labour Court in so far as the order for reinstatement is concerned.

5. Having heard the learned counsel for the parties, it appears to the Court that the question whether the respondent had put in 240 days service in the year immediately preceding the date of termination is a question of fact on which the Labour Court has given a finding that the respondent had put in 240 days service in the year immediately preceding the date of termination. The petitioner is not justified in relying upon the number of days for which the respondent had

rendered services in a calendar year as the provisions of Section 25F clearly provide that the year for this purpose would be the year expiring on the day immediately prior to the date of termination. It appears from the figures given by the learned counsel for the petitioner that since the respondent had already put in 209 days service in the 1998 and 54 days service in the year 1999, the respondent had put in 240 days service in the year immediately prior to the date of his termination. Since this was done without giving notice or notice pay or retrenchment compensation to the respondent-workman, the direction given by the Labour Court for reinstatement with continuity of service cannot be faulted.

6. As regards the backwages, there is considerable substance in the grievance made by the learned counsel for the petitioner that when the respondent had not put in any service and he was already running a shop at village Patodra in Keshod Taluka of Junagadh District, which does not appear to have been denied by the respondent-workman before the Labour Court, there was no justification for giving any direction for payment of even 50% backwages. Hence, this part of the award will have to be set aside.

7. In view of the above discussion, the petition is partly allowed. The direction given by the Labour Court for reinstatement of the respondent-workman to the original post with continuity of service is not disturbed, but the direction given by the Labour Court for payment of 50% backwages to the respondent-workman is hereby quashed and set aside. The respondent-workman shall accordingly be reinstated in service by 31.12.2001.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
sundar/-